IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	**Case No. 4:05-CV-00329-TCK-SAJ**
	)	
TYSON FOODS, INC., et al.,	)	
	)	
Defendants.	)	

STATE'S RESPONSE IN OPPOSITION TO TYSON CHICKEN, INC.'S OBJECTION TO AND MOTION TO QUASH SUBPOENA FOR INSPECTION AND SAMPLING OF PREMISES AND BRIEF IN SUPPORT

Table of Contents

Table of Authorities

Cases

Statutes and Rules

Secondary Sources

COMES NOW the Plaintiff, the State of Oklahoma, ex rel. W.A. Drew Edmondson, in his capacity as Attorney General of the State of Oklahoma, and Oklahoma Secretary of the Environment, C. Miles Tolbert, in his capacity as the Trustee for Natural Resources for the State of Oklahoma under CERCLA, (hereinafter "the State") and for its Response in Opposition to the Objection to and Motion to Quash Subpoena for Inspection and Sampling of Premises filed on May 3, 2006, and refiled on May 5, 2006 at docket entries 512 and 545 by Tyson Chicken, Inc. ("Tyson") respectfully submits the following:

I. INTRODUCTION

Tyson argues that the subpoena issued by the State in this action directed to Hudson Farms, Inc. should be quashed for a myriad of reasons only one of which, undue burden, is contemplated in Fed. R. Civ. P. 45(c) as grounds for quashing a subpoena. Tyson admits that even though it may be record title owner of the real property at issue, the property is leased to Steve Butler d/b/a Green Country Farms[1] which also contracts with Tyson to raise poultry flocks on the property. Tyson moves to quash the State's subpoena on the basis of its interest in and control over the real property and flocks raised thereon.[2] The State, however, seeks only to perform minimally invasive sampling and testing of the premises in connection with its effort to stop and clean-up the pollution of the natural resources of Oklahoma -- a benefit to all Oklahomans and to all who visit and

[1] Steve Butler d/b/a Green Country Farms is included as a non-party Poultry Grower in the objection and motion to quash filed at docket entries 493 and 503 to which the State files its response simultaneously herewith and incorporates same herein to the extent that the arguments and authorities cited therein are applicable to the arguments advanced by Tyson.

[2] It is unclear whether Tyson seeks to quash the State's subpoena also on behalf of Butler and/or Green Country Farms. As Butler and Green Country Farms have already moved to quash the subpoena under the guise of "certain Poultry Growers" it is assumed that Tyson's Motion is concerned only with its own alleged interest.

vacation in our State. The benefits to the citizens of the State and to the State itself, including Tyson's own lessees and contract growers, are wholly ignored by Tyson. The testing and sampling requested will neither prejudice nor unduly burden Tyson. Tyson's Motion should be overruled.

II. ARGUMENTS AND AUTHORITIES

A. Rules of Civil Procedure and Standard

A movant requesting that a subpoena be quashed or modified has the burden of proof and must meet "the heavy burden of establishing that compliance with the subpoena would be 'unreasonable and oppressive.'" Williams v. City of Dallas, 178 F.R.D. 103, 109 (N.D. Tex. 1998); see also In re Coordinated Pretrial Proceedings in Petroleum Prods. Antitrust Litig., 669 F.2d 620, 623 (10th Cir. 1982) (stating that a movant seeking to quash a subpoena has a "particularly heavy burden" as contrasted with a movant seeking only limited protection).

The determination of whether a subpoena constitutes an undue burden is committed to the discretion of the court. Jones v. Hirschfeld, 219 F.R.D. 71, 74 (S.D.N.Y. 2003). Moreover, the decision whether to quash or modify a subpoena is also within the district court's discretion. Tiberi v. CIGNA Ins. Co., 40 F.3d 110, 112 (5th Cir. 1994). In ruling on a motion to quash a subpoena, the court is not limited to the remedy of quashing the subpoena; it may also modify it to remove its objectionable features. Ghandi v. Police Dep't of Detroit, 74 F.R.D. 115, 117 (E.D. Mich. 1977). Indeed, modification of an unduly burdensome subpoena generally is preferred to outright quashing. Linder v. National Sec. Agency, 94 F.3d 693, 698 (D.C. Cir. 1996).

Tyson argues its opposition from the standpoint of both party and non-party. "There is some suggestion that a different test of relevancy might apply when the subpoena is directed to a person who is not a party in the action, but it seems that there is no basis for this distinction in the rule's language." 9A Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 2459 (2d. ed. 1995); see also Composition Roofers Union v. Graveley Roofing Enters., Inc., 160 F.R.D. 70 (E.D. Pa. 1995) (refusing to treat nonparty differently in evaluating discovery burden). As Wright and Miller note, "Rule 26(c) and Rule 45(c) provide ample power for the proper protection of third parties from harassment, inconvenience, or disclosure of confidential documents without resorting to a different test of relevance for the purposes of defining the scope of a subpoena." 9A Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 2459 (2d. ed. 1995). Tyson has failed to show how compliance with the subpoena would be unreasonable, oppressive or prejudicial to Tyson.

B. The Subpoena is Not Unduly Burdensome

Factors considered in an undue burden analysis include "relevance, the need of the party for the [discovery], whether the request is cumulative and duplicative, the time and expense required to comply with the subpoena (relative to the responder's resources), and the importance of the issues at stake in the litigation." Linder v. Calero-Portocarrero, 180 F.R.D. 168, 174 (D.D.C. 1998) (citing Fed. R. Civ. P. 26(b)(2); Williams v. City of Dallas, 178 F.R.D. 103, 110-11 (N.D. Tex. 1998); United States v. IBM Corp., 83 F.R.D. 97, 104 (S.D.N.Y. 1979)). Here, all the factors point away from a finding of undue burden.

In a case out of the Western District of Missouri, the federal district court dealing with the matter of a subpoena issued to property owners for environmental testing on their land refused to quash the inspections. Thomas v. FAG Bearings Corp., 846 F. Supp. 1382 (W.D. Mo. 1994). In Thomas a party served Rule 45 subpoenas on third party landowners requesting permission to access their property to conduct geophysical surveys and soil-gas, soil, and groundwater testing. Id. at 1399. Like Tyson here, the third parties objected to the requests. The court rejected the third parties' objections, noting that the inspections were "to be conducted by and at the expense of defendants and they do not appear to involve any burdensome requests." Id. at 1400.

The information from the requested testing in the instant case clearly is relevant to the State's claims. Indeed, the Court has already determined that the requested samples are relevant, so the need is obvious. (Tr. of Expedited Hr'g Mar. 23, 2006 at 82) ("This lawsuit is about whether or not the Illinois River watershed has been polluted by the application of chicken litter, so obviously the samples requested are relevant.") Like the Poultry Growers, Tyson will have no expenses involved with the testing imposed by the State, and the time required of them certainly will not rise to the level of unduly burdensome. Should Tyson elect to have its experts or representatives present when the State conducts its testing is wholly and completely the choice of Tyson and no imposition of expense on Tyson by the State. The State has a right to conduct discovery and voiced concerns of time and expense from a multi-billion dollar company like Tyson should not persuade this Court to disallow the State's progression in prosecution of its case. Finally, the importance of the issues at stake in the litigation is tremendous: whether the State of

Oklahoma and its citizens will be able to enjoy a clean, clear, safe, and unpolluted watershed.

Tyson claims that the subpoena at issue is unreasonable and imposes an undue burden on Tyson. The requirement that a discovery request not be overbroad "is but a restatement of the proposition that the relevance of and need for [the discovery] sought will bear on the reasonableness of the subpoena." United States v. IBM Corp., 83 F.R.D. 97, 106 (S.D.N.Y. 1979). A subpoena runs the risk of being found overbroad and unreasonable when it "sweepingly pursues material with little apparent or likely relevance to the subject matter" of the suit. Id. at 106-07. A subpoena may be broad without being unreasonably so. Id. at 107. Here, the subpoenas have as their result material and information that obviously has great relevance to the subject matter of the suit.

Tyson cites Belcher v. Basset Furniture Industries, Inc., 588 F.2d 904 (4th Cir. 1978) (Movants' Objs. at 8-9) in support of its proposition that the subpoena at issue is unduly burdensome. The facts of Belcher are so different from the facts of the present case that any comparison of the cases for support of Tyson's Objection is meaningless. The Belcher court noted that, unlike this case:

- "[w]hat the 'significant' evidence might be was unspecified."
- The request "fail[ed] to specify any reason or need for the inspection."
- "The interrogation of the employees, conducted informally, would also be . . . tantamount to a roving deposition, taken without notice, throughout the plants, of persons who were not sworn and whose testimony was not recorded, and without any right by the defendant to make any objections to the questions asked."
- The motion for discovery was for "blanket discovery upon bare skeletal request" without any showing of need.

- Only "small utility" could be derived from the inspection.
- The requester "made no effort to establish either the area of inquiry to which the inspection is to be directed or why."
- The proposed inspection would not have "any meaningful direction."

Belcher, 588 F.2d at 907-09. Thus, Tyson's reliance on Belcher rings hollow.

Tyson further asserts that the State's right to inspect and test is not unlimited. (Tyson's Mot. at 4). Federal Rule of Civil Procedure 34(a) expressly addresses a party's right to enter "upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing or sampling the property or any designated object or operation thereon, within the scope of Rule 26(b)." Fed. R. Civ. P. 34(a) (emphasis added). The Court has wide discretion in making orders allowing the inspection, testing and sampling of property. Martin v. Reynolds Metals Corp., 297 F.2d 49, 57 (9th Cir. 1961) (finding also that nothing in Rule 34 limits a party to only one entry on land for inspection purposes; "The number should depend on the necessities of the case").

Nowhere in its Objection does Tyson claim that the State does not need the information to be obtained pursuant to the subpoena or that such information is irrelevant to the case. Nor can they. The gravaman of Plaintiff's case is that runoff and discharges of poultry waste for which the Poultry Integrator Defendants are responsible is polluting the waters of Oklahoma, and testing done at the source of the alleged pollution obviously is thus needed and highly relevant. When relevance and need of a discovery request have been demonstrated "'[t]he fact that the materials requested cover an extended period of time . . . will not render the subpoenas invalid.'" Id. at 107 (quoting Democratic Nat'l Comm. v. McCord, 356 F. Supp. 1394, 1396 (D.D.C. 1973)).

Tyson also claims, in subsection D of its Motion, that the subpoena must be quashed because of its "lack of specificity." However, the degree of specificity for a discovery request "depends upon the facts and circumstances of each case." See IBM, 83 F.R.D. at 107. The specificity required must be "'adequate, but not excessive, for the purposes of the relevant inquiry.'" Id. (quoting Oklahoma Press Publ'g Co. v. Walling, 327 U.S. 186, 209 (1946)). Also, this case involves the interests of Oklahoma and its citizens in protecting human health and the environment. While the burden in this instance is minimal, the nature and importance of a case may justify "a substantial burden of compliance" and "considerations of cost and burdensomeness must give way to the search for truth" in cases of importance to the public good. Id. at 109. Under Federal Rule 45(c)(3)(A) "'[a]n evaluation of undue burden requires the court to weigh the burden to the subpoenaed party against the value of the information to the serving party." Moon v. SCP Pool Corp., 232 F.R.D. 633, 637 (C.D. Cal. 2005) (quoting Travelers Indem. Co. v. Metropolitan Life Ins. Co., 228 F.R.D. 111, 113 (D. Conn. 2005)).

Tyson argues that the State should, in essence, allow Tyson into its work product and case preparation, so that Tyson will be prepared to refute and challenge the State's findings. Tyson is not entitled to the State's work product absent exceptional circumstances that have not been shown. Hartford Fire Ins. Co. v. Pure Air on the Lake Limited Partnership, 154 F.R.D. 202 (N.D. Ind. 1993). The State will tender its expert reports as required by the Federal Rules of Civil Procedure and the Court's Scheduling Order. Tyson claims that no application of poultry litter or waste has been made on the subject property, but does not refute that poultry litter or waste has been stored on the subject property. Instead, Tyson seeks to gain access to the State's work product rather

than conducting testing of its own on its own property. Tyson assuredly has access to the property and to the litter and waste present thereon. There has been no exceptional circumstance presented by Tyson to warrant its intrusion into the work product of the State.

As stated above, none of the undue burden factors support quashing the subpoena. Rather, each factor supports a rejection of Tyson's Objection. The State's subpoena is not overbroad and unreasonable as Tyson claims. None of the cases Tyson cites supports its position that this subpoena is unduly burdensome. Therefore, the Court should reject Tyson's Objections and Motion to Quash.

C. The States' Biosecurity Guidelines are Adequate and the State's Discovery Request is Not a Fishing Expedition

Tyson's complaint that the State has failed to provide adequate biosecurity guidelines is specious at best. During the counsel meeting April 25, 2006, at which counsel for Tyson and for certain Poultry Growers were present, specific and detailed discussions were had concerning the State's biosecurity measures. The subpoenas had been issued and served prior to this meeting, providing every opportunity for counsel to raise any legitimate concerns held.

Months prior to the counsel meeting April 25, 2006 and the recent exchange of correspondence dealing with biosecurity protocols, Tyson's counsel was informed of the State's biosecurity protocols. The State sought samples from some of the same non-party growers subject to subpoenas in this matter in the Fall of 2005. Tyson's counsel was provided as an attachment to a pleading in that matter the document entitled "Poultry Premise Entry Biosecurity Protocols For Regulatory Personnel" along with an affidavit from Becky Brewer-Walker, D.V.M., the State Veterinarian and Animal Industry

Division Director of the Oklahoma Department of Agriculture Food and Forestry. This pleading with the affidavit is attached hereto as Exhibit "1". In her affidavit Dr. Brewer-Walker states:

> "The Department has developed specific biosecurity protocols that are equivalent to biosecurity programs developed by Tyson Chicken, Inc., George's, Inc., Cobb-Vandress, Inc. and Simmons Foods, Inc."

Dr. Brewer-Walker further states that the guidelines are "**sufficient to allow poultry operations to be safely sampled even under conditions where disease is present.**" For Tyson to now assert that the State has provided inadequate biosecurity guidelines is unwarranted, false, and misleading. Counsel for Tyson has been in possession of and discussion concerning biosecurity guidelines proposed by the State for months. It is interesting to note that the new biosecurity protocols urged by Tyson appear to be more stringent, thus obfuscating the State's sampling efforts. Also important to note is the fact that these new protocols reflect a revision date of February 2006, months after being advised of the State's protocols and the same month that the State sought sampling in this case pursuant to its Motion for Expedited Discovery filed February 22, 2006 (Docket #210). Many requests have been made that Tyson furnish the biosecurity protocols that were in existence as of the date of the filing of this action. Those requests have been ignored.

Though the State's biosecurity protocols are sufficient even in the presence of disease, to address the issue raised by Tyson of the chance that any chickens will be harmed, scared or infected, the State has proposed that sampling or testing conducted inside the poultry houses may be conducted when there is no flock present in the house. In other words, after a mature flock has gone on to the next step in the process and before

a new flock is deposited in the house, the State would then conduct testing and sampling. Tyson inexplicably does not address or acknowledge this proposal in their Motion to Quash as it would obviously alleviate many, if not all, of its concerns.

Simply put, the States's biosecurity guidelines are adequate as evidenced by the affidavit of Dr. Bewer-Walker, the State Veterinarian who is the authority on animal health biosecurity protocols related to the Agriculture Code in the State of Oklahoma.

Tyson incorrectly assumes for its argument that the State has done nothing to verify the history of litter applications with respect to the properties identified for inspection. Tyson is aware that waste application reports are required to be filed with the State Department of Agriculture. The State is in possession of records reflecting the land application of waste reported by growers, private, and commercial waste applicators. The State is also aware that uncovered piles of poultry waste have been observed on the Tyson property. Therefore, Tyson's argument that the State is engaged in nothing but a "fishing expedition" is baseless.

Additionally, Tyson's alleged concern regarding the geotechnical borings requested by the State is unfounded. The Oklahoma Water Resource Board is authorized to adopt rules and regulations governing licensing persons engaged in commercial drilling and drilling of geotechnical borings. Okla. Stat. tit. 82, §§1020.16, 1085.2. The specific OWRB regulation applicable to the use of the geoprobe described in the sampling protocols submitted by the State are 785:35-7-2(a), which discusses the general requirements to be applied to the geotechnical borings, and 785:35-11-2(c), which sets forth requirements for plugging the boring hole. The State's sampling request is designed to comply with all such regulations with the use of a licensed driller.

The State's sampling protocol and procedures have been discussed with Mr. Kent Wilkins, State Program Coordinator for the Well Drilling and Pump Installation Program of the Oklahoma Water Resources Board, the State employee in charge of these matters. Mr. Wilkins conveyed to the State's counsel that he agrees that the State's proposed groundwater sampling is in accordance with such regulations. See Affidavit of Kent Wilkins attached hereto and labeled as Exhibit "2".

D. The State Should Not Be Required To Post Any Bond

Tyson has asked the Court to require the State to post a bond "sufficient to indemnify Tyson for any damages caused to the real property or to the poultry flocks" as a condition precedent to any inspection and sampling. (Tyson Obj. & Mot. to Quash at 13.) The Court should reject such a request for several reasons.

First, as the State has noted above, it has proposed that testing may be done at a time when poultry is not present on the farms. This would obviate any concerns of Tyson and/or the growers that any inspection or testing could, however unlikely, bring about any possible harm to the flocks.

Second, the cases on which Tyson relies for its request simply do not support the advance posting of any security bond in this case. Tyson relies on Gregg v. Clerk of the United States District Court, 160 F.R.D. 653 (N.D. Fla. 1995) in support of its contention, but that case provides no support to Tyson. The Gregg court held that "[a] party proceeding in forma pauperis is still required to pay witness and mileage fees in connection with deposition subpoenas." Id. at 654. It is hardly controversial that a party issuing a subpoena must pay witness or mileage fees; this has no bearing on whether a party issuing a subpoena must post in advance a security bond to do testing. Likewise,

Badman v. Stark, 139 F.R.D. 601 (M.D. Penn. 1991), a case that the Gregg court cited, dealt with the issue of how an indigent party planned on paying for witness fees and mileage in connection with the service of a subpoena, not the issue of whether a bond is required before inspection and testing. Id. at 604.

Tyson's reliance on Williams v. Continental Oil Co., 14 F.R.D. 58 (W.D. Okla. 1953) is puzzling because that case was reversed and remanded by the Tenth Circuit in Williams v. Continental Oil Co., 215 F.2d 4 (10th Cir. 1954). In Williams the district court refused the plaintiffs' motion for an order allowing a subsurface directional survey – a highly invasive procedure – of an oil well that plaintiffs contended was taking oil from their land. 14 F.R.D. at 67. The court noted that the oil well was twenty-four years old, and might easily be damaged by such a subsurface directional survey. Id. at 66. If the well casing was broken or collapsed, it was "probable that the [well] could not again be placed upon production." Id.

The Tenth Circuit reversed and allowed the survey, noting that the survey "was the only way to prove or disprove" the crucial fact essential to the right of plaintiffs to recover. 215 F.2d at 8. Moreover, the Tenth Circuit made no mention of the fact that a court could order a party to post a bond for any possible damage; in this case, the plaintiff had offered to post the bond, along with various other safeguards to prevent any untoward events that might possibly come from the subsurface directional survey. Id. at 5. Thus, Tyson's reliance on the district court's decision in Williams is doubly unwarranted: the decision was overruled, and the court did not order a bond to be posted.

Additionally, Micro Chemical, Inc. v. Lextron, Inc., 193 F.R.D. 667 (D. Colo. 2000) provides no support for Tyson's assertion that the Court should require the State to

post a security bond. In that case plaintiff wanted to alter defendant's machine in a patent dispute. The court refused, noting that if plaintiffs wanted to alter a machine such as the one in question, they could simply go out and purchase one and do all the tests they wanted. Id. at 668. Obviously, such is not the case here.

Finally, Tyson has provided neither the State nor the Court with any reasonable evidence that the type of testing the State requires will provide any permanent damage to any of the growers' lands or flocks. Tyson has offered no evidence about testing of lands in the past damaging poultry flocks, no evidence that the type of boring the State will undertake causing permanent, irremedial damage, and no evidence that any compensable harm is possible, let alone likely. For all of these reasons, the Court should reject Tyson's request that the Court order the State to post a security bond before engaging in its testing of the growers' lands.

CONCLUSION

Tyson has failed to show that a legitimate basis exists to warrant an order quashing the subpoena at issue. The importance of the issues at stake in the litigation is tremendous: whether the State of Oklahoma and its citizens will be able to enjoy a clean, clear, safe, and unpolluted watershed and a healthier environment. The testing and sampling requested is relevant. It will neither prejudice nor harm Tyson. Tyson's Objection and Motion should be overruled.

Respectfully Submitted,

W.A. Drew Edmondson (OBA 2628)
Attorney General
Kelly H. Burch (OBA #17067)
J. Trevor Hammons (OBA #20234)

Assistant Attorneys General
State of Oklahoma
2300 North Lincoln Boulevard, Suite 112
Oklahoma City, OK 73105
(405) 521-3921

C. Miles Tolbert, OBA #
Secretary of the Environment
State of Oklahoma
3800 North Classen
Oklahoma City, Ok 73118
(405) 530-8800

/s/ Richard T. Garren
M. David Riggs (OBA #7583)
Joseph P. Lennart (OBA #5371)
Richard T. Garren (OBA #3253)
Douglas A. Wilson (OBA #13128)
Sharon K. Weaver (OBA #19010)
Riggs, Abney, Neal, Turpen,
Orbison & Lewis
502 West Sixth Street
Tulsa, OK 74119
(918) 587-3161

James Randall Miller, OBA #6214
David P. Page, OBA #6852
Louis Werner Bullock, OBA #1305
Miller Keffer & Bullock
222 S. Kenosha
Tulsa, Ok 74120-2421
(918) 743-4460
Attorneys for the State of Oklahoma

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of May, 2006, I electronically transmitted the attached document to the following:

Jo Nan Allen jonanallen@yahoo.com, bacaviola@yahoo.com
Tim Keith Baker tbakerlaw@sbcglobal.net

Douglas L. Boyd dboyd31244@aol.com
Vicki Bronson vbronson@cwlaw.com, lphillips@cwlaw.com
Paula M Buchwald pbuchwald@ryanwhaley.com, loelke@ryanwhaley.com
Lloyd E. Cole, Jr colelaw@alltel.net, gloriaeubanks@alltel.net; amy_colelaw@alltel.net
Angela Diane Cotner AngelaCotnerEsq@yahoo.com
John Brian DesBarres mrjbdb@msn.com, JohnD@wcalaw.com
Delmar R Ehrich dehrich@faegre.com, kcarney@faegre.com; ; qsperrazza@faegre.com
John R Elrod jelrod@cwlaw.com, vmorgan@cwlaw.com
William Bernard Federman wfederman@aol.com; law@federmanlaw.com, ngb@federmanlaw.com
Bruce Wayne Freeman bfreeman@cwlaw.com, lcla@cwlaw.com
Ronnie Jack Freeman jfreeman@grahamfreeman.com
Robert W George robert.george@kutakrock.com, donna.sinclair@kutakrock.com
Tony Michael Graham ! tgraham@grahamfreeman.com, <B! R
James Martin Graves jgraves@bassettlawfirm.com
Michael D Graves mgraves@hallestill.com, jspring@hallestill.com; smurphy@hallestill.com
Thomas James Grever tgrever@lathropgage.com
Jennifer Stockton Griffin jgriffin@lathropgage.com
Carrie Griffith griffithlawoffice@yahoo.com
Michael Todd Hembree hembreelaw1@aol.com, traesmom_mdl@yahoo.com
Theresa Noble Hill thillcourts@rhodesokla.com, mnave@rhodesokla.com
Philip D Hixon Phixon@jpm-law.com,
Mark D Hopson mhopson@sidley.com, dwetmore@sidley.com; joraker@sidley! .com
Stephen L Jantzen sjantzen@ryanwhaley.com, mantene@ryanwhaley.com; loelke@ryanwhaley.com
Mackenzie Lea Hamilton Jessie maci.tbakerlaw@sbcglobal.net, tbakerlaw@sbcglobal.net; macijessie@aol.com
Bruce Jones bjones@faegre.com, jintermill@faegre.com; bnallick@faegre.com
Jay Thomas Jorgensen jjorgensen@sidley.com, noman@sidley.com
Raymond Thomas Lay rtl@kiralaw.com, dianna@kiralaw.com; niccilay@cox.net
Krisann Kleibacker Lee kklee@faegre.com, mlokken@faegre.com
Nicole Marie Longwell Nlongwell@jpm-law.com, ahubler@jpm-law.com
Linda C Martin lmartin@dsda.com, mschooling@dsda.com
Archer Scott McDaniel, Smcdanie l@jpm-law.com, jwaller@jpm-law.com Robert Park Medearis , Jr medearislawfirm@sbcglobal.net
John Stephen Neas sneas@loganlowry.com,
George W Owens gwo@owenslawfirmpc.com, ka@owenslawfirmpc.com
Marcus N Ratcliff mratcliff@lswsl.com, sshanks@lswsl.com
Robert Paul Redemann@rredemann@pmrlaw.net, scouch@pmrlaw.net
Randall Eugene Rose rer@owenslawfirmpc.com, ka@owenslawfirmpc.com
Patrick Michael Ryan pryan@ryanwhaley.com, jmickle@ryanwhaley.com; kshocks@ryanwhaley.com
Robert E Sanders rsanders@youngwilliams.com,
David Charles Senger dsenger@pmrlaw.net, scouch@pmrlaw.net

Jennifer Faith Sherrill jfs@federmanlaw.com, law@federmanlaw.com; ngb@federmanlaw.com
William Francis Smith bsmith@grahamfreeman.com
Colin Hampton Tucker chtucker@rhodesokla.com, scottom@rhodesokla.com
John H Tucker jtuckercourts@rhodesokla.com
R Pope Van Cleef ! , Jr popevan@robertsonwilliams.com, kirby@robe! rtsonwil liams.com; kmo@robertsonwilliams.com
Kenneth Edward Wagner kwagner@lswsl.com, sshanks@lswsl.com
David Alden Walls wallsd@wwhwlaw.com, lloyda@wwhwlaw.com
Timothy K Webster twebster@sidley.com, jwedeking@sidley.com; ahorner@sidley.com
Adam Scott Weintraub adlaw@msn.com,
Terry Wayen West terry@thewestlawfirm.com,
Dale Kenyon Williams, Jr. kwilliams@hallestill.com, jspring@hallestill.com; smurphy@halestill.com
Edwin Stephen Williams steve.williams@youngwilliams.com
J Ron Wright ron@wsfw-ok.com, susan@wsfw-ok.com
Lawrence W Zeringue lzeringue@pmrlaw.net, scouch@pmrlaw.net
N. Lance Bryan; lbryan@dsda.com
Gary V. Weeks, gweeks@bassettlawfirm.com
Thomas C. Green; tcgreen@sidley.com

I hereby certify that on this 8th day of May,. 2006, I served the foregoing document by U.S. Postal Service on the following:

Jim Bagby
Rr 2, Box 1711
Westville, Ok 74965

Gordon W. Clinton
23605 S Goodnight Ln
Welling, Ok 74471
Susann Clinton
23605 S Goodnight Ln
Welling, Ok 74471

Eugene Dill
P O Box 46
Cookson, Ok 74424

Marjorie Garman
5116 Highway 10
Tahlequah, Ok 74464

James C Geiger
Rt 1 Box 222

Kansas, Ok 74347

G Craig Heffington
20144 W Sixshooter Rd
Cookson, Ok 74427

John E. and Virginia W. Adair Family Trust
Rt 2, Box 1160
Stilwell, Ok 74960

James Lamb, Dorothy Jean Lamb &
James R. & Dorothy Jean Lamb Dba Strayhorn Landing Marina
Route 1, Box 253
Gore, Ok 74435

Dara D Mann
Faegre & Benson (Minneapolis)
90 S 7th St Ste 2200
Minneapolis, Mn 55402-3901

Doris Mares
P O Box 46
Cookson, Ok 74424

Teresa Brown Marks
323 Center St., Suite 200
Little Rock, AR 72201

Charles L. Moulton
323 Center St., Suite 200
Little Rock, Ar 72201

Donna S Parker
34996 S 502 Rd
Park Hill, Ok 74451

Richard E Parker
34996 S 502 Rd
Park Hill, Ok 74451

Monte W Strout
209 W Keetoowah
Tahlequah, Ok 74464

Robin L. Wofford
Rt 2, Box 370
Watts, Ok 74964

/s/ Richard T. Garren